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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,676	11/29/2000	Andrew W. Wilson	ADAPP135	2040
7590	08/12/2005		EXAMINER	
Edmund H. Mizumoto MARTINE PENILLA & KIM, LLP 710 Lakeway Drive, Suite 170 Sunnyvale, CA 94085			ALAM, UZMA	
			ART UNIT	PAPER NUMBER
			2157	
DATE MAILED: 08/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.	WILSON, ANDREW W.
09/726,676	
Examiner Uzma Alam	Art Unit 2157

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13.  Other: \_\_\_\_\_

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that Jain does not disclose or suggest reducing the data transfer in direct correlation to the level of data transfer congestion. In response, Applicant is urged to refer to the initial rejection of the claim, which included columns 5, lines 44-67, column 6, lines 1-33 and 56-65 and column 8, lines 1-7. For further detail, column 8, lines 8-55; column 9, lines 42-67, column 10, lines 1-18 and column 11, lines 57-67 are also cited. Applicant cites column 11, lines 15-27 and argues that the claim limitations are not anticipated by the reference, however, the Applicant cited portion of the reference is one small portion and points to only one embodiment. In the Examiner cited portions of the reference, the reference teaches reducing data transfer in correlation to load. The reference teaches that in response to the feedback information of how much traffic is going through the routers, the router adjusts its throughput accordingly and adapts its service of packets based on the load (column 6, lines 61-65; column 8, lines 8-55).

Applicant argues that the cited portions of Jain do not disclose or suggest the feature of setting a probability factor where the probability factor increases as the capacity level increases and decreases as the capacity level decreases. Applicant is directed to column 8, lines 8-55. The reference teaches calculating an average queue length which correlates to the capacity level and increases as the capacity increases and decreases as the capacity decreases. This average queue length is a probability factor that adjusts as load changes over different periods of time. It is calculated based on previous and present cycles to obtain a probable future load of the router.

Applicant argues that Jain fails to disclose the randomly generating a value where the value is indicative of whether the data packet sent by the sending switch is to be marked with a congestion indicator. Once again, Applicant cites column 8 lines 35-55, a small portion of the reference, which refers to a specific embodiment. The Examiner cited portions of the reference, however, anticipate the limitations of the claims. The reference teaches taking samples of load levels at random times and using a calculation of those values to determine whether or not a flag is to be set on packets from certain sources. Applicant is directed to column 6, lines 44-65 and column 7, lines 1-16 and column 8, lines 35-55 of Jain.



ANNETTA M. ABIGAIL T. HENNINE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100